

MINUTES
South Carolina Board for Registration of Professional Engineers and Surveyors
Board Meeting

9:00 a.m., January 25, 2011
Synergy Business Park
110 Centerview Drive, Kingstree Building Room 108
Columbia, South Carolina

Tuesday, January 25, 2011

1. Meeting Called to Order

Chairman Andy Kinghorn, P.E., called the meeting to order at 9:00 a.m. Board Members present were Theresa Hillard Hodge, P.E., Thurl M. Amick, Sr., PLS, Nancy W. Cottingham, Gene L. Dinkins, P.E., PLS, Cecil Huey, Jr., P.E., Charles M. Joye, II, P.E., and M.L. Love, Jr., P.E.

Staff members participating in the meeting included: Doris Cubitt, Board Administrator, acting on behalf of Jan Simpson, Board Administrator, and Melissa Jones, Program Assistant. Other LLR employees participating in the meeting included: Sharon Dantzler, Deputy General Counselor; Randall Bryant, Assistant Deputy Director; Christa Bell, Assistant General Counsel; Steve Freshley, Chief Investigator, OIE; Beth Cumalander, Administrative Assistant; and Michelle Sims, Administrative Assistant,

a. Public notice

Mr. Kinghorn stated public notice of this meeting was properly posted at the S. C. Board of the Registration for Engineers and Surveyors office, Synergy Business Park, Kingstree Building and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act.

2. Introduction of Board Members and All Other Persons Attending

Mr. Kinghorn introduced the Board members.

3. Approval of Agenda

Mr. Kinghorn asked if any members needed to make changes to the agenda and no changes were recommended.

Mr. Kinghorn stated that there would be a change in the agenda to allow Dr. Kenneth Lewis from South Carolina State University (SCSU) to speak before the Board earlier than scheduled.

4. Discussion Topics

a. SCSU – USC Joint Program Update – Gene Dinkins, Dr. Kenneth Lewis

Dr. Lewis, Dean, College of Science of Science, Mathematics, Engineering, and Technology, at SC State University, thanked the Board for the opportunity to appear before them and for their support of SCSU as they move from engineering technology to engineering. Dr. Lewis stated there was a change in the mission statement of SCSU that gives SCSU permission and the ability to expand into the field of engineering. Dr. Lewis requested the Board endorse development of a civil engineering program at SCSU. Mr. Kinghorn noted that approximately two years ago, the Board did endorse SCSU to become an EAC/ABET accredited engineering program and asked if Dr. Lewis was aware of that. Dr. Lewis was aware that the Board had

endorsed a substantially equivalent program but was not aware that the Board had endorsed the program.

Mr. Kinghorn stated that the Board is anxious to see students sign up but at this juncture, the Board feels they need to step back and allow SCSU and the University of South Carolina (USC) to move forward with the program. Mr. Kinghorn will have a copy of the endorsement letter that was drafted in a previous Board meeting sent to Dr. Lewis' attention. Mr. Kinghorn asked Dr. Lewis if SCSU's nuclear engineering program was an EAC/ABET accredited program; Dr. Lewis responded that it is.

Mr. Dinkins asked where SCSU stood in implementing the program agreed upon by SCSU and USC. Dr. Lewis said that SCSU is prepared to move forward as they have recently been approved by the Commission on Higher Education and expect students to be able to enroll next semester.

5. Application Hearings

a. Jerry Byrd – Reinstatement

Mr. Byrd was originally scheduled to appear before the Board on November 18, 2010, but did not appear at that time. This matter was recorded by a court reporter in order to produce a verbatim transcript should one be necessary. The Board questioned Mr. Byrd about answers on his reinstatement application and why he did not renew his license within the allotted time frame.

Mr. Byrd stated that he did not intentionally fail to renew, but simply did not remember to do so as he was dealing with his wife's ongoing health problems. Mr. Byrd answered questions from the Board in regard to his failure to renew in a timely manner.

Mr. Kinghorn informed Mr. Byrd that the Board would take his testimony under advisement.

Executive Session

MOTION

Mr. Dinkins made a motion the Board enter executive session. Mr. Love seconded the motion and it carried unanimously.

Return to Public Session

MOTION

Mr. Love made a motion the Board return to public session. Mrs. Hodge seconded the motion and it carried unanimously.

Jerry Byrd – Reinstatement

MOTION

Mrs. Hodge made a motion to suspend Mr. Byrd's license until the July 19, 2011, Board meeting at which time he may appear before the Board to justify why he should be reinstated. Also, he must acquire 30 hours of professional development hours (PDHs) that must be approved by the Board. Mr. Dinkins seconded the motion, Mr. Joye opposed the motion, and the motion carried 7 – 1 (Joye).

b. Wayne Ledbetter – Principles of Land Surveying Exam

This matter was recorded by a court reporter in order to produce a verbatim transcript should one be necessary. The Board questioned Mr. Ledbetter about his positive answer to the

application question, "Have you ever been convicted of a crime other than a minor traffic offense?"

Mr. Ledbetter answered questions from the Board regarding the circumstances surrounding the incident.

Mr. Kinghorn informed Mr. Ledbetter that the Board would take his testimony under advisement.

Executive Session

MOTION

Mrs. Hodge made a motion the Board enter executive session. Mr. Amick seconded the motion which carried unanimously.

Return to Public Session

MOTION

Mr. Amick made a motion the Board return to public session. Mrs. Hodge seconded the motion which carried unanimously.

Wayne Ledbetter – Exam

Mr. Amick made a motion the Board grant approval for Mr. Ledbetter to take the Principles of Land Surveying examination for licensure in South Carolina. Mr. Dinkins seconded the motion which carried unanimously.

Mr. Kinghorn paused the meeting for a break.

6. Request for Board Guidance – Engineering by Foreign Engineer (velodrome)

Tom Smiley of Smiley Engineering from Fort Mill, South Carolina and Dave Williams of The Assure Group appeared before the Board to discuss the requirements for foreign engineers sealing plans for a velodrome in Rock Hill. Smiley Engineering is the U.S. partner of a German engineering firm that created the velodrome design, one of only nineteen in the U.S. and the third one designed to meet world championship standards. The German firm is under contract to design the velodrome in Rock Hill; The Assure Group contracted with Smiley Engineering to oversee some of the structural work.

Mr. Smiley contacted Administrator Simpson in early November to determine how the job could be permitted and if the credentials of the German engineers from Germany would meet the requirements of NCEES. After consultation with Board member Andy Kinghorn, Ms. Simpson advised that the German engineers could not design and seal the plans, nor could Mr. Smiley's firm seal the plans because they had not originated them or supervised their preparation.

Mr. Dinkins recommended that the engineer apply to NCEES and have his foreign degree evaluated against the ABET accreditation criteria then apply to South Carolina for a license which would include passing the PE exam. Mrs. Dantzler recommended that the Board review regulation 49-204.

There was discussion regarding Regulation 49-204 as some Board members did not have that section in their copies of the regulations. Mrs. Dantzler left to obtain copies for Board members.

Discussion continued regarding taking the PE exam in Germany, other velodromes in the U.S., who designed them, time pressure due to financial penalties if not completed on time, and the background of the German design professionals.

Mrs. Dantzler returned with copies of regulation 49-204 and discussion followed.

Mr. Dinkins state the Board does not have the authority to grant a license to foreign applicants without at least requiring they take the PE exam. Mr. Dinkins stated the velodrome plans will have to be drawn by a South Carolina licensed professional engineer or the foreign engineers must obtain licensure in South Carolina.

Discussion followed amongst the Board members about obtaining update, formal copies of the regulations for reference. [Note: it was later determined that the Board has the correct version of the Regulations which no longer includes 49-204.]

7. Approval of the November 18, 2010, Board Meeting Minutes

MOTION

Mr. Amick made a motion the Board approve the November 18, 2010, Board meeting minutes. Mrs. Cottingham seconded the motion which carried unanimously.

8. Chairman's Remarks – Andy Kinghorn

Mr. Kinghorn reported that the Board responded to inquiries from the Legislative Audit Council and subsequently met with auditors. The Board has not yet received a report from the Council. LLR's new director, Catherine Templeton, will meet with the Chair and Vice-Chair later in the day.

9. Administrator's Remarks, For Information – Doris Cubitt

a. Financial Report – Doris Cubitt

Mrs. Cubitt presented the financial report on behalf of Mrs. Simpson. The report included revenue, expenditures, and balances for the fiscal year of 2009 – 2010 as well as year-to-date financial information. She noted difficulty in converting information from the new state financial system (SCEIS) but said Boards will begin receiving reports at each board meeting. Mrs. Cubitt answered questions about the financial report.

Mr. Joye requested a formal written explanation as to why costs have increased and where those costs occurred. Mrs. Cubitt stated she would contact the finance department and have that information presented at the next Board meeting.

b. Administrative Disciplinary Report – Missy Jones

Mrs. Jones briefed the Board regarding the disciplinary report. (Attached)

c. Administrator's Report – Doris Cubitt

Mrs. Cubitt presented the administrator's report on behalf of Mrs. Simpson. She stated that Mrs. Simpson had included licensure statistics in the Board's packet; between May and October of 2010, online renewals of individual licenses totaled 10,439.

d. Legislative Report – H. 3039 (stock school plans) – Doris Cubitt

Mrs. Cubitt presented the legislative report on behalf of Mrs. Simpson. Landscape Architect Board Regulations have been prefiled, and H. 3039 proposes the mandatory use of "stock" school plans for K-12 schools. Mr. Kinghorn stated that the Architectural Board has officially opposed H. 3039; he asked the Board members' position.

MOTION

Mr. Joye made a motion the Board go on record as opposed to bill H. 3039. Mr. Love seconded the motion and it carried unanimously.

**10. Office of Investigation and Enforcement Report – Steve Freshley
Office of General Counsel Report – Christa Bell**

- a. Number of Investigations – Steve Freshley
- b. Number of Open Complaint Cases – Steve Freshley
- c. Number of OIE Pending Investigations – Steve Freshley

IRC Report

Mr. Freshley stated that there have been no IRC meetings since the November Board meeting.

He reported nine active cases in OIE; the oldest is 465 days old and the newest is three days old. He stated that IRC members and legal counsel will meet in early February to make a determination on the oldest case.

- d. Number of OGC Pending Hearings – Christa Bell
- e. OGC Case Report – Christa Bell

Ms. Bell reported there are currently ten open cases in OGC; of those, one is pending legal action and another has been drafted and is set to go to the ALC. Five cases are pending Consent Agreements and Memoranda of Agreement; there are no cases pending final order hearings and only one case pending a final order. Fourteen cases have been closed since January 2010; one case is on appeal at the Administrative Law Court, scheduled for oral arguments in February 2011.

11. Unfinished Business

- a. Construction Staking – Thurl Amick

This topic was carried over from the November 2010 meeting. Mr. William Gray, PLS, representing the Lowcountry Chapter of the SC Society of Professional Land Surveyors, appeared before the Board seeking clarification on the Board's position on construction staking. Appearing with him was Ray Cook with Cook Land Surveying and Terry Hatchell with Surveying Consultants. The issue is whether construction staking may be done by unlicensed individuals who are not supervised by a licensed surveyor. The Board's response at that time was that it was not allowed because staking was considered to be surveying. Mr. Gray asked about a "business and construction exemption" that allows employees of contractors and construction companies to perform construction staking and surveying.

Mr. Kinghorn repeated that the Board's earlier determination was that construction staking companies needed to have licensed surveyors on their staff and have a Certificate of Authorization to practice as a firm. He continued that if staking is done by an employee of the construction company, the Board's position was that the employee did not have to be licensed as a surveyor, although Mr. Amick took exception to that.

Mr. Gray asked the Board for guidance in addressing what he believes to be unlicensed practice. Mrs. Dantzler explained that the Board's jurisdiction extends only to their own licensees. However, a Cease and Desist Order may be issued against unlicensed persons or firms upon receipt of a complaint and documentation. If the individual or company continues unlicensed practice, the Department's Legal staff could take the matter before the Administrative Law Court which has authority to issue an injunction and impose fines.

Mr. Gray asked about the use of GPS technology for grading. Mr. Dinkins noted the Board does not license equipment, but instead licenses individuals. Regardless of the equipment used, an

individual must be licensed to perform survey work. If they are doing so without being licensed, the Board may issue a Cease and Desist Order.

b. Review of IRC Members and terms of service – Theresa Hodge

Mrs. Hodge reviewed proposed guidelines for the investigative review committee (IRC). She suggested that the committee consist of two engineering members and two surveying members who would serve a maximum of eight years; at least one of those members would be actively engaged in the practice of engineering or surveying.

Mrs. Hodge said that Mrs. Simpson had some questions regarding the appointment schedule and the system of alternating voting members. Discussion followed regarding the differences between representatives and alternates, the purpose of alternates, staggering appointments, having Board members on the IRC committee, and whether one active member was sufficient.

After discussion, it was suggested that the IRC have two members who are actively practicing or who are former Board members. Mrs. Hodge will draft revised guidelines for discussion at the March meeting.

c. Clarification on ‘Retired’ and ‘Emeritus’ Status for Engineers and Surveyors

Mrs. Simpson requested clarification specifically related to whether an individual would have to make a license active before being allowed to change its status to retired or emeritus status. She stated that retired is an employment status, and emeritus is a license status and that those individuals who decide to go to an emeritus status would be treated as having a lapsed license if they wanted to practice again. The matter was carried over to the March meeting.

d. Support for Engineers and Surveyors – Gene Dinkins

Mr. Dinkins report no progress on the issue of providing support for engineers and surveyors using Education and Research Funds. He suggested inviting Joe Jones, SCSPE Executive Director, to discuss the possibility of funding educational conferences for current licensees and those trying to get licensed.

12. New Business

Joe Jones reported on a case recently decided by the South Carolina Supreme Court in favor of an insurance company and against a construction company.

He also noted legislation was introduced in the House as a result of several poorly constructed condominiums in the Myrtle Beach area. The bill affects those in the “construction profession” including engineers and land surveyors. Mrs. Dantzler stated the bill affirms that a general liability policy does not cover substandard workmanship. Mr. Jones asked for the Board’s position on the bill. Discussion followed about the case and pending bill.

Mr. Jones also noted a bill to exempt registrants from continuing education requirements if they are overseas or are in a combat zone. Mr. Kinghorn stated that the Board had already discussed that topic and had decided that if the individual was overseas for more than 12 months the Board would exempt half of the continuing education requirements.

a. NCEES Change to Education Standard – Impact on SC Board

Mr. Dinkins discussed proposed new education requirements for engineers which reduce the number of courses in humanities. Discussion followed about the NCEES requirements versus ABET requirements. This matter was carried over to allow time for Dr. Castro, Education Consultant, to comment on the changes.

b. Endorsement of Gene Dinkins for NCEES President-Elect
Mr. Dinkins will run for President-Elect for the NCEES; the election will be held at the Zone meeting in Austin, Texas, in April. Discussion followed about other candidates who might run.

MOTION

Mr. Joye made a motion the Board endorse Mr. Dinkins' bid for NCEES President-Elect. Mrs. Hodge seconded the motion and it carried unanimously.

c. Southern Zone Award nominations

MOTION

Mrs. Hodge made a motion the Board nominate Mr. Dinkins for the Southern Zone Distinguished Service award. Mr. Amick seconded the motion and it carried unanimously.

Mr. Dinkins explained the process by which awards are determined.

d. RCEP Program: Acceptance by SC Board – M. L. Love

Mr. Love reminded the Board that NCEES and ACEC have developed the Registered Continuing Education Provider (RCEP) program. This program evaluates course providers, certifies they meet strict standards, maintains records of CE for engineers, and produces a transcript of the coursework. NCEES shares in the profits generated by the program. The RCEP offers two programs: 1) storing all CE information for individual for \$35 per year; or 2) free storage of CE credits provided by RCEP registered providers only. Mr. Love asked that the Board endorse the RCEP program and accept printouts of the continuing education credits in the case of an audit. Discussion ensued about monitoring the programs offered by providers to ensure quality and relevance to the industry.

MOTION

Mr. Dinkins made a motion the Board endorse the RCEP program. Mr. Amick seconded the motion and it carried unanimously.

e. Call for Volunteers to serve on NCEES Committees

Mr. Dinkins recommended that all members volunteer for NCEES Committees.

Mr. Love asked the Board's perception on the industrial exemption in regards to licensing. Discussion followed regarding to whom the exemption applies. It was noted that the exemption applies only to the federal government and utilities, not state governments and municipalities. Mr. Love noted the issue will be discussed at ACCA this month.

f. Request for acceptance – community college as online course provider

Mr. Dinkins discussed a request from an individual that the Board accept online coursework from a community college as meeting education requirements for licensure. The Board noted they do not approve individual courses, but as long as the course was either ABET or TAC approved, it would be accepted.

g. Incorrect Board of Registration Seal – Jan Simpson

This matter was carried over until the March meeting.

h. Board Member evaluation forms

Mr. Kinghorn stated that clarification was needed on the application forms for comity because there was a recent incident where an applicant claimed 15 years of experience in order to have the FE exam waived. Clarification was needed because the applicant believed, due in part to

the application, that he was entitled to having the FE examination waived when in fact, the statutes state it is at the Board's discretion.

Discussion followed as to whether or not the Board would waive the FE exam for an individual who has 15 years of experience and under what circumstances would the Board exercise this discretion

13. Discussion Topics (continued)

a. NCEES Summary of October 2010 Exam Statistics and Administration

A handout was provided to the Board with these statistics and there was no discussion by the Board.

b. Collusion Issues

Mr. Dinkins reported an irregularity during the October FE examination and as a result, Bob Whorton, NCEES Director of Compliance, will appear at the March Board meeting for a hearing regarding this occurrence. Discussion followed as to the number of collusion incidents that occur and how they have been addressed in the past.

Mr. Kinghorn referred back to agenda item 11 (d), Review of IRC Members and terms of service, and stated that Randy Bryant, LLR Deputy Director, suggested having a Board member attend the IRC meetings on a rotating basis so that a different Board member attends each of the six IRC meetings. The suggestion was well received; the matter will be held over and voted upon at the March Board meeting.

14. Board Member Reports

a. NCEES Update – Gene Dinkins

Mr. Dinkins stated that the Board Presidents Assembly will be held in Atlanta, February 11 - 12. As NCEES Board liaison, he attended the Sustainable Building Design Task Force meeting. The Task Force studied building commissioning but expanded the task to commissioning in general. He briefed the Board on the financial well being of the Council and discussed progress on Computer-based Testing.

b. ACEC Update – M. L. Love

Mr. Love stated that ACEC, The American Public Works, and ASCE have started an Institute of Sustainable Infrastructure which will have a grading system similar to the one used by LEED. He noted an increase in mergers and acquisitions, four in the state of South Carolina that affect the Board, where small firms have been bought by larger firms. ACEC is also monitoring the legislation mentioned earlier in the meeting.

15. Public Comments

Brian Pietras, P. E. and President of the Structural Engineers Association of South Carolina, spoke briefly to the Board about the organization. Begun in 2005, they are affiliated with the National Council of Structural Engineers, have 135 members in four chapters for engineers and one student chapter at Clemson University. A representative will attend Engineering Board meetings to keep abreast of pertinent issues affecting their members. He offered the association's website address for additional information.

16. Executive Session (if needed)

The Board did not enter into executive session.

17. Adjournment

MOTION

Mr. Love made a motion the Board adjourn. Mr. Dinkins seconded the motion and it carried unanimously.

The January 25, 2011, meeting of the SC Board for Registration for Professional Engineers and Surveyors adjourned at 1:35 p.m. Board members then attended a Licensing Ceremony at the State House for newly licensed engineers and surveyors followed by a reception sponsored by SCSPE.

The next meeting of the SC Board of the Registration for Professional Engineers and Surveyors is scheduled for March 22, 2011, at 9:30 a. m., Room 108.

Respectfully submitted,

Michelle Sims